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Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Attention: Jon Wilkins – Chief
Wireless Telecommunications Bureau

Roger Noel – Chief
Mobility Division

Re: WT Docket 10-112
Ex-Parte Presentation

Dear Ms. Dortch:

On behalf of the Blooston Licensees and pursuant to Section 1.1206(a) of the Commissions' Rules, we hereby submit further comments regarding the Commission's proposal in the above-referenced proceeding, to modify its rules governing license renewal and discontinuance of operation as those rules would impact the various wireless services.

On April 15, 2016, John Prendergast and Richard Rubino of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP had a telephone conference call with Roger Noel and Joyce Jones of the FCC's Wireless Telecommunications Bureau – Mobility Division regarding the above referenced docket. The discussion involved the matters as set forth in this letter.

At the outset, the Blooston Licensees believe that the FCC should follow two paths in this proceeding – one for private internal use licenses under Parts 80, 87, 90 and 101 of the Commission’s Rules and the other for the remaining commercial wireless services. With respect to the private internal use licenses, the Blooston Licensees urge the Commission to promptly move forward with an order addressing the license renewal and discontinuance rules for private internal use licensees consistent within the parameters discussed below, while it issues a Further Notice of Proposed Rulemaking in order to further develop the record concerning specific rules proposal for the remaining services. This would provide private internal use licensees with certainty while allowing the affected industries to assess more specific proposals and rule wording for renewal/discontinuance with respect to these other wireless services.

700 MHz Paradigm

Apart from the issuance of the NPRM in WT Docket 10-112, the Commission has formulated the renewal standard for 700 MHz licenses in the Wireless Communications Service (WCS) that has been replicated for the Advanced Wireless Service (AWS) and the 600 MHz service. The Blooston Licensees understand the Commission’s need for affirmative confirmation of construction status at license renewal in order to discourage spectrum warehousing, and in particular, situations where licensees shut down systems for significant portions of the license term. However, the Blooston Licensees believe that the Commission’s rules must address situations where, despite diligent efforts by licensees, technology and economic conditions change that adversely affect best laid business plans for the efficient use of spectrum – as has occurred in the Multipoint Distribution Service and the IVDS (218-220 MHz) Service. In order to avoid the waste of valuable financial resources on spectrum to meet artificial construction requirements while equipment standards stabilize, the Blooston Licensees urge the Commission to provide licensees with the ability to change business plans in order to take advantage of new technologies. This policy would be consistent with a policy of encouraging licensees to meet customer demands for new and innovative services and is consistent with the construction deadline extensions that were provided for MDS, IVDS, 700 MHz and some LMDS licensees where it became obvious that original plans were either not feasible or sufficient equipment resources were not available.

Safe Harbors Should be Clear and Concise

The Blooston Licensees urge the Commission to adopt safe harbors that are broad and inclusive enough to ensure the timely and efficient processing of routine license renewal applications while reserving special scrutiny for those license renewal applications where there is a genuine question as to whether or not the applicant has met the requirements to warrant license renewal. As discussed below, the nature of the safe harbor should depend upon the type of license/use – e.g., private internal, auctioned private internal, site based commercial, and auctioned commercial. As discussed below, private internal use licensees have differing needs from commercial service providers.

In particular, private internal use licensees make use of spectrum for the specific purpose of meeting internal communications needs as a means for fulfilling core business requirements – whether it be, for example, in manufacturing, transportation, emergency road service repair or alarm signaling and detection. As a result, the build out by these entities will reflect their particular technology and coverage needs, rather than a goal of ubiquitous coverage without regard to whether the licensee has any plant or operations in a particular area. The Commission must tailor its renewal rules to accommodate this private internal use, not only in the context of the Part 90 private land mobile services, but also in the context of the Part 80 Marine/Coastal services, Part 87 aviation services and Part 101 private microwave services.

Commercial service providers should be evaluated based upon a metric which identifies the offering of service to the public in order to ensure that scrutiny is limited to those license renewal applicants that have not made *bona fide* efforts to bring a valuable service to the public. However, as discussed above, the Blooston Licensees urge the Commission to ensure that its evaluation takes into account those circumstances where changes in technology and business cases run counter to continued service – as has occurred with IVDS and MDS. Such developments may cause instances where service may have been discontinued during the license term, while the licensee sought to transition from a failed technology or business plan to one that works.

Each situation is discussed in greater detail below:

Private Internal (Site Based) – For site-based private internal use licenses, the Commission should continue using its current license renewal system, which is highly efficient and allows the Commission to grant license renewal applications very quickly and with minimal staff intervention. The Commission’s proposal to require new showings and apply new renewal standards, if applied to shared spectrum, will disrupt what has traditionally been a very clear cut, inexpensive, rapid and non-controversial license renewal process and turn it into what could be an expensive and unnecessarily complex task for both the Commission’s staff and licensees. This is especially true since many private internal use licensees hold numerous licenses in a variety of radio services. To put it simply, “if it ain’t broke, don’t fix it.”

In particular, the Commission has proposed detailed license renewal showings which would include not only detailed construction showings, but also a description and certification of enforcement records, etc. The Commission can meet its policy needs while streamlining the proposed license renewal process through the use of appropriate safe harbors and application self-certifications that are drawn broadly enough to limit staff inquiries to those circumstances where scarce staff resources should be expended. For the Private Internal Use Services in Parts 80, 87, 90 and 101, the Commission should continue the present system. At most, the Commission could add a license renewal schedule to the Form 601 for site-based private internal use licensees which would include the following certifications:

- The station has not permanently discontinued operation; and
- The current radio operations are being used to meet the licensee's internal radio communications needs.

Private Internal Use (Auctioned) – The Commission can take official notice that several licensees have obtained auction spectrum in order to meet private internal communications needs. As a result, these licensees have been forced to purchase licenses at auction that may include geographic areas that may not be required by the licensee to meet its internal communications requirements. In this circumstance, the Blooston Licensees submit that it would be fundamentally unfair for the Commission to automatically strip the license, or even the geographic portion of the license that the licensee is not using as of the renewal deadline, since it was forced to purchase a much larger service area in order to obtain the spectrum it needed in the required area.¹ In this regard, the Commission received the benefit of its bargain – namely the purchase price for the geographic area; and the licensee met its obligation by putting the spectrum to its best use –in the service area required to meet its internal communications needs. This dynamic is very similar to a commercial provider offering a niche service – which the Commission has stated would be sufficient to meet the substantial service requirement.

As a compromise and in recognition of the fact that licensees paid for the entire market at auction in order to meet its internal communications needs, the Commission should allow such private use licensees to sell those portions of the license on the secondary market that the licensee has determined are not (a) required to either meet its private internal communications needs and (b) necessary to provide interference protection for co-channel licensees. In this way, the licensee would be in a position to recover a portion of its financial investment while at the same time making that spectrum available to others for the purpose of providing service to the public. If upon evaluation of the second renewal application the Commission determines that there are areas the licensee is not using for coverage, then it could reclaim those areas while leaving the licensee with adequate buffer against interference.²

Commercial Licenses

The Blooston Licensees agree that a renewal showing for commercial licensees must stand on a review of the applicable construction requirement, and a showing that the service being provided is better than or equal to the construction requirement. But the renewal standard for commercial service providers – whether site based or licensed geographic area – should be based upon a balance of service to the public and economic reality. Thus, the Commission

¹ Moreover, the licensee's coverage may change over time, as it e.g., opens new stores, factories, distribution centers, etc.

² In reclaiming any spectrum, the Blooston Licensees submit that it is critical that the incumbent geographic area licensee be able to keep the spectrum that it is using as well as a sufficient area (which may be determined by real world propagation models) in order to ensure that there is a reasonable buffer zone around the incumbent geographic area licensee. In this way, the Commission can ensure interference free operation between the existing private internal use licensee and any future licensees in the partitioned area.

should look to whether the licensee is providing service to the public where it is needed in order to meet subscriber demand, and not necessarily whether the licensee has continued to meet an arbitrary population or geographic coverage metric. The Commission can take official notice that over the years, different services (e.g., paging, IMTS, SMR, etc.) have undergone fundamental changes as business cases change and new technologies have been developed. With the advent of broadband and other services, it is very likely that existing services today will be supplanted and/or minimized in the future – much like paging and IMTS have been with the advent of broadband PCS and cellular as everyday communications tools. Because communications services are constantly evolving, licensees need to be able respond to market changes without being financially penalized for ensuring that service can be provided to those subscribers that want service in a manner that is profitable. Without this flexibility, licensees will be forced into a situation where decisions are made to either preserve a license without regard to the service needs of the subscriber base or terminate service altogether – which in effect would be a loss of a necessary and valuable communications service to the public within a particular market.

Commercial License Safe Harbors

The Blooston Licensees agree that the Commission should establish one or more safe harbors to enable commercial licensees to establish with certainty that the renewal standard has been met. One possible safe harbor would be for the licensee to certify that (a) customers are being served (and/or that roaming service is being provided to other carriers' customers); (b) the system's base stations are operational and providing service to the public; and (c) the system is still satisfying the buildout requirement. In the event that the licensee established coverage that exceeded the construction requirements in connection with its buildout, the licensee should be able to reduce coverage down to the required construction benchmark.

Enforcement History

While the Commission has proposed to require that renewal applications include a detailed enforcement history, the Blooston Licensees believe that this would be too cumbersome, especially since many licensees hold numerous licenses and this information is already retained by the Commission in its internal records. The Blooston Licensees note that regardless of best efforts in ensuring that radio transmitters are operated in compliance with the FCC's Rules, circumstances will arise from time-to-time where transmitters or other equipment fall out of compliance with the FCC's rules or other inadvertent errors occur – thereby resulting in the issuance of a letter of admonishment, Citation, Notice of Violation or Notice of Apparent Liability for Forfeiture. Because personnel changes are not uncommon over a license term, it is a realistic possibility that current personnel at the time a license renewal application is filed may not be aware of legacy violations during that licensee's various license terms – especially if the licensee holds multiple licenses. As a result, it would be more likely than not that an erroneous answer could be provided to the Commission in connection with an enforcement history certification through an innocent mistake. Rather than setting licensees up for a "gotcha"

situation by creating an issue where none currently exists, the Blooston Licensees urge the Commission to limit the certifications in the license renewal application to self-certifications from license renewal applicants that stations are still operational and being used to provide service – whether it be meeting private internal communications needs for private users or providing/offering service to the public for commercial service providers and rely on its internal enforcement records to identify those licensees where license qualifications may be an issue. In this way, the Commission will have reasonable assurance that there is no spectrum warehousing – while at the same time not inadvertently creating an enforcement issue where none should otherwise exist.

The Commission can take official notice that any relevant enforcement history is already contained within the Commission's records and available to the processing bureaus should the need arise to question the qualifications of a licensee. Having applicants attempt to include this information accurately within the four corners of the license renewal application is only inviting the potential for innocent errors and unnecessary relitigation of the enforcement action by third parties. Should the Commission determine that an enforcement history certification is required, the Blooston Licensees urge the Commission to (a) limit the look-back to the current license term and (b) any enforcement action that resulted in the payment of a monetary fine or license revocation. The enforcement history should not include any matter that is not the subject of a final and non-appealable action.

Ownership Reporting

The Commission has proposed ownership reporting that is consistent with the requirements under Rule Section 1.2110. The Blooston Licensees believe that this standard is overly onerous – especially for licensees in the private services. The Blooston Licensees recognize that the genesis of Rule Section 1.2110 was in the auction context in order to ensure that applicants did not receive an undue benefit – such as bid credits, installment loans or specially reserved spectrum blocks. But the overreaching nature of Section 1.2110, while perhaps appropriate in allocating bid credits, would infer affiliation and control between the licensee and other third parties that are irrelevant for Section 310(d) control purposes – while turning what should be a routine renewal showing into a burdensome disclosure process that requires the gathering of information from entities that may or may not be responsive.


Effective Date for New Rules

In order to avoid confusion and ensure administrative fairness, the Blooston Licensees urge the Commission to provide a reasonable transition period so that all licensees are provided with sufficient time to come into compliance. We therefore recommend that any new renewal rules be effective with the second license renewal following adoption of an FCC order, so that every licensee has at least one full license term before the new requirements apply. The Blooston Licensees believe that a five-year time-clock would be insufficient – especially if the Commission were to require more complex certifications for licensees.

Path Forward

As discussed above, the Blooston Licensees urge the Commission to divide the proceeding into two parts – one which addresses private internal use licenses under Parts 80, 87, 90 and 101 and the other which addresses commercial, exclusive use services. With respect to the private internal use licenses, the Commission should retain the current licensing process that allows license renewals to be granted in a very expedient manner with little staff resources. To the extent that spectrum usage certifications are required, the Commission could modify the Form 601 in order to add the certifications discussed above as part of the application form. For the remaining services, the Blooston Licensees recommend that the Commission issue a Further Notice of Proposed Rulemaking in order to provide the public with an opportunity to comment on the specific wording of any new rules.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John A. Prendergast".

John A. Prendergast
Richard D. Rubino
Attorneys for the Blooston Licensees

cc: Joyce Jones, FCC